IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO Nos.340, 341, 342, 468 of 2000, 325 of 2001 and 165 of 2002.

Date of decision: 16.11.2006.

(For title, see page (i) & (ii)

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The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant :

(See page (i) & (ii).

For the Respondents :

Surjit Singh, Judge (Oral).

By this judgement, five appeals filed by the Insurance Company and one by an injured claimant, are being disposed of.

2. Bus No. HIS- 1204, owned by respondent Yashwant Singh, met with an accident on 27.7.1994, as a result of which some passengers traveling by the bus sustained injuries and property of some persons other than the passengers was also damaged. Five separate claim petitions were filed by the injured and the owners of the damaged properties. In the claim petitions, it was stated that respondent Raj alias Danu was on the steering wheel at the time when the accident took place and that the vehicle was being driven in a rash or negligent manner. The bus was insured for third party risk with New India Insurance Company, appellants in FAO Nos. 340, 341, 342 of 2000, 325 of 2001 and 165 of 2002. The owner, the

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Whether the reporters of the local papers may be allowed to see the Judgment?

alleged driver, the attorney of the owner of the bus and the Insurance Company were impleaded as respondents in all five claim petitions. The owner took the plea that the vehicle was being driven not by Raj alias Danu, as alleged in the claim petitions, but by one J.R.Verma, whom he had engaged as driver for the purpose. Raj alias Danu denied that he was driving the bus when the accident took place. New India Insurance Company alleged that Raj alias Danu, who was stated to be driving the bus, did not possess any licence to drive the bus and so it was not liable to indemnify the insured. It was also alleged that its liability as regards damage to the third party property was limited to Rs. 6,000/-, as the policy was an Act policy.

3. The Accident Claims Tribunal has returned the finding that the vehicle was being driven by Raj alias Danu, respondent at the time when the accident took place and that said Raj alias Danu did not possess a valid driving licence. However, the Tribunal has held that since the owner had engaged a licenced driver, named J.R.Verma, he could not be said to have committed breach of condition of the policy as to the person entitled to drive the vehicle, because it was not shown that it was with his consent or to his knowledge or on account of some act of carelessness on his part that the vehicle at the relevant time happened to be driven by respondent Raj alias Danu, who did not possess a valid driving licence. The Tribunal has awarded various amounts of money on account of injuries sustained by injured petitioners and for damage to the property of other petitioners. The Insurance Company has been

ordered to pay the awarded amounts of compensation to all the claimants.

4. Grievance of the Insurance Company- appellant, which has filed appeal Nos. 340, 341, 342 of 2000, 325 of 2001 and 165 of 2002, is two fold. First, it is alleged that since the vehicle was being driven by a person who did not hold a licence, this is a case of breach of condition of the policy as to the person entitled to drive and so the insurance company/ appellant is not liable to pay compensation in any of the five claim petitions. The second contention is that the policy being an Act policy, the appellant could not have been ordered to pay compensation in excess of Rs. 6,000/-, for the damage to third party property.

5. FAO No. 468 of 2000, has been filed by one of the injured, namely Kanchan Kumari, who has been awarded Rs. 88,000/-, on account of compensation for the injury, which has resulted in 42% permanent disability in relation to the entire body.

6. I have heard the counsel for the parties and gone through the record. It is true that evidence on record clearly establishes that the vehicle at the relevant time was being driven by Raj alias Danu. It is also a fact that Raj alias Danu did not hold a licence to drive the bus. But it is also a fact that the owner of the bus had engaged a man, named J.R.Verma to drive the bus and said J.R.Verma was holding a valid licence. Now, when the owner of the bus had engaged a person holding a valid and effective licence to drive the bus, the Insurance Company cannot escape its liability for payment of compensation merely by proving the fact that the man

who was driving the vehicle at the time of occurrence of the bus did not possess a licence. In such a situation, the insurance company is further required to allege and prove that it was with the knowledge of the owner or on account of some act of carelessness on the part of the owner that the vehicle went into the hands of a person not possessing a licence. In the present case, admittedly neither such an allegation was made nor was any evidence led to show that it was with the knowledge of the owner or on account of some act of carelessness on his part that a person not holding a licence came to occupy driver's seat. In this view of the matter, I find support from a judgement of the Hon'ble Supreme Court in **National Insurance Co. Ltd**. vs. **Swaran Singh and others** [2004 (3) SCC 297]. So the first contention raised by the Insurance Company is rejected.

7. Coming to the second contention, insured produced the insurance cover note only. He has withheld the policy. The cover note shows that only a sum of Rs. 650/-, had been paid by the insured on account of coverage of third party risk. The amount suggests that premium was paid only for covering the statutory risk. In other words, the policy is presumably an Act policy. This apart, this court in **Hamirpur Cooperative Transport Society Ltd**. vs. **Kaushalya Devi and others** [1983 ACJ 70], relying upon the below reproduced portion of a Division Bench judgement of Allahabad High Court in Desraj and others vs. Ram Narain and others [1980 ACJ 202 (All.), has held that where the policy is not produced, presumption has to be raised that the policy is an Act policy only:-

> "Where existence of an insurance policy covering the risk to a third party is admitted, the Tribunal, while

> determining the amount payable under section 110-C can, in view of the provision contained in section 95(2) of the Act, presume that the insurance company must have in any case covered the risk upto the statutory limit mentioned therein and in the absence of insurance policy it can safely direct payment of such an amount, by the insurance company. If, however, any person claims that under the contract of insurance, the insurance company had undertaken to indemnify the insured, for a larger sum, he has to get the policy made available for perusal of the Tribunal. In absence of insurance policy and without persuing the same the Tribunal could not fix any liability higher than that mentioned in section 95 of the Act. As in this case the insurance company could not, under section 110-C be saddled with a liability in excess at an amount higher than Rs. 2000/-."

So, it is held that the agreement of insurance between the insurance company and the owner of the bus covers the third party risk only to the statutory limit of Rs. 6,000/-, as regards damage to third party property.

8. Appeal No. 468 of 2000, has been filed by one of the petitioners- claimants, who sustained injuries in the accident. This petitioner was a student of 20 years at the time when the accident took place. Her spine was fractured as a result of the accident and the same has led to permanent disability to the extent of 42% in relation to the entire body, per statement of PW 5 Dr. S.R.Thakur and the certificate, Ex. PW 5/B, issued by him. Her grievance is that amount of Rs.88,000/-, awarded by the Tribunal as compensation is too meagre. I do agree with the contention of the counsel for this injured petitioner- appellant. Dr. S.R.Thakur (PW 5) testified that the

petitioner cannot do any physical work because of permanent disability caused by the injury to the spine. Looking to the young age of the petitioner and the fact that she would not be in a position to do any physical work throughout her life, because the nature of the disability has been opined to be permanent, I am of the considered view that she is entitled to Rs. 4,00,000/-, break up of which is as follows:-

1. Physical pain, suffering and loss of amenities of life	= Rs.1,50,000/-
2. Future loss of earnings	= Rs.2,00,000/-
3. For having been rendered handicapped and thereby losing prospects of getting a bride-groom of her choice	=Rs. 50,000/-
	Total = Rs.4,00,000/-

9. In view of the aforesaid findings, appeal Nos. 325 of 2001, 342 of 2000 and 165 of 2002, filed by the insurance company are dismissed. Appeal Nos. 340 and 341 of 2000, filed by the insurance company are allowed to the extent that their liability for payment of claims awarded by the Tribunal on account of damage to third party property is held to the extent of Rs. 6,000/-, only, in each of the two cases, with proportionate interest.

10. Appeal No. 468 of 2000, filed by one of the injured, namely Kanchan Kumari, is allowed and the amount of compensation is raised from Rs. 88,000/- to Rs.4,00,000/-, and the difference between the amount of compensation awarded by the Tribunal and that determined hereby is ordered to be paid with interest at the rate of 7.5% per annum from the date of the petition to the date of the

deposit of the aforesaid amount of money with the Registry of this Court. The insurance Company is directed to deposit this amount with interest within ten weeks from today.

November 16, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**

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1. **FAO(MVA) No. 340 of 2000.**

New India Assurance Co. ….Appellant.

v.

Satya ParkashThakur & ors. …. Respondents.

For the appellant: Mr.K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.

For the respondents: Mr.Devender Ghosh, Advocate, for respondent No. 1.

Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate, for respondent No.2.

2. FAO(MVA) No. 341 of 2000.

New India Assurance Co. ….Appellant.

v.

Dharam Pal & ors. …. Respondents.

For the applicant: Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.

For the respondents: Mr..Devender Ghosh, Advocate, for respondent No. 1.

Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate, for respondent Nos. 2 & 3.

3. **FAO(MVA) No. 342 of 2000.**

New India Assurance Co. ….Appellant.

v.

Miss Kanchan Kumari & ors. …. Respondents.

For the applicant: Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.

For the respondents: Mr. Shashi Shirshoo, Advocate, for respondent No. 1.

Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate, for respondent Nos. 2 & 3.

4. **FAO(MVA) No. 468 of 2000.**

Miss Kanchan Kumari ….Appellant.

v.

Yashwant Singh & ors. …. Respondents.

For the applicant: Mr. Shashi Shirshoo, Advocate.

For the respondents: Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate, for respondent Nos. 1 & 2.

Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate, for respondent No. 4.

5. **FAO(MVA) No. 325 of 2001.**

New India Assurance Co. ….Appellant.

v.

Smt. Bhagwati Devi & ors. …. Respondents.

For the applicant: Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.

For the respondents: Mr. Shashi Shirshoo, Advocate, for respondent No. 1.

Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate, for respondent Nos. 2 & 3.

6. **FAO(MVA) No.165 of 2002.**

New India Assurance Co. ….Appellant.

v.

Suresh Kumar & ors. …. Respondents.

For the applicant: Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.

For the respondents: Mr.Ashok Sood, Advocate, for respondent No. 1.

Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate, for respondent Nos. 2 & 3.